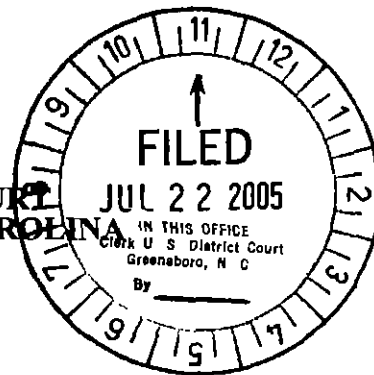


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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA



LUKE ALLEN,

Petitioner,

v

UNITED STATES OF AMERICA,

Respondent

1:05cv00555

1:99CR277-1

**RECOMMENDATION AND ORDER
OF MAGISTRATE JUDGE ELIASON**

Petitioner, a federal prisoner, has filed an application for a writ of habeas corpus using the forms for a petition pursuant to 28 U S C § 2241. He submitted the petition to the United States District Court for the Eastern District of Virginia which transferred it to this court. Generally, petitions pursuant to section 2241 challenge the execution or computation, as opposed to the validity or legality, of the conviction or sentence. This petition does not pose such a challenge.

Notwithstanding, under the so-called "savings clause" of section 2255, relief pursuant to section 2241 may be available in the narrow circumstances where a motion under section 2255 "is inadequate or ineffective to test the legality of his detention." 28 U S C § 2255, In re Jones, 226 F 3d 328, 333 (4th Cir 2000). However, such relief is only available in the district of confinement. Id. at 333-34. Petitioner is confined in Virginia. He may not therefore litigate this section 2241 petition in this district. Additionally, the court notes that the Virginia court held that petitioner had not demonstrated that section 2255 was inadequate or ineffective to test the legality of his detention. (Docket no. 3)

In this district, petitioner has already attacked the same conviction and sentence in a previous section 2255 motion. (No. 1:01CV301). His request to file a second such motion

was denied by the Fourth Circuit in December 2003 (Docket no 64, No 1 99CR277-1) Because petitioner may not litigate a section 2241 petition in this district, and because he has not received permission to file a second or successive section 2255 motion in this district, this particular motion should be dismissed

IT IS THEREFORE RECOMMENDED that this action be dismissed sua sponte for lack of jurisdiction


United States Magistrate Judge

July 22, 2005